might, nevertheless, recover, the principal not having been prejudiced by the delay, *Schramm* v. *Wolff*, (Texas, 1910), 126 S. W. 1185. But assuming that under the bilateral theory notice of performance within the time specified is essential, it is well established that when performance is prevented by the acts of the principal, the cause of action is not defeated. *Lundell* v. *Schultz*, 186 Ill. App. 245, WILLISTON ON CONTRACTS, § 677.

CONTRACTS—ILLEGALITY OF "TYING CLAUSES" IN A LEASE OF MACHINERY UNDER THE CLAYTON ACT.—Defendant, through its patents, controlled a very large portion of the business of supplying shoe machinery. Shoe machinery was leased to shoe manufacturers upon conditions, some of which were (1) that the machinery would be used only on shoes upon which certain other operations were performed on other machines of defendant; (2) that if lessee failed to use exclusively certain kinds of machines made by defendant, lessor could cancel all leases; (3) that lessee should purchase all supplies from defendant; (4) that lessee should buy all additional machinery of a certain class from defendant; (5) that royalty should be paid on all shoes operated upon by machines of competitors. In a suit by the United States to restrain the defendant from making leases containing such restrictions, *held*, such restrictions were invalid under § 3 of the Clayton Act which makes it unlawful for persons engaged in interstate commerce to lease machinery, whether patented or unpatented, upon condition that the lessee shall not use machinery of the competitors of the lessor, where the effect of such lease may be substantially to lessen competition or to tend to create a monopoly. *United Shoe Machinery Corporation* v. *United States*, U. S. Sup. Ct. Adv. Op., No. 119, Oct. Term, 1921.

In the absence of the statute, leases of machinery containing "tying clauses" similar to those enumerated above have been upheld. *United Shoe Machinery Co.* v. *Brunet* [1909], A. C. 330; *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32. But the court in the principal case decides that such restrictions are prohibited by the Clayton Act for, though "the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use." The defendants' chief defense was that the Act is an unconstitutional limitation upon the rights secured to a patentee and is therefore a taking away of property without due process. But the Supreme Court has formerly held that a patent confers upon the patentee only the exclusive right to make, use, and sell the invention and confers no privilege to make contracts in themselves illegal. *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502; *Standard Sanitary Mfg. Co.* v. *U. S.*, 226 U. S. 20.

CRIMES—MENS REA.—Defendant was indicted for having sold a derivative of opium in violation of the federal Narcotic Act of 1914, 38 STAT. 785. He demurred on the ground that the indictment failed to charge that he knew the derivative to be such. *Held*, the statute did not make such knowledge

an ingredient of the offense and the allegation was not necessary. *United States* v. *Balint,* 42 Sup. Ct. 301 (March 27, 1922).

There is plenty of authority in accord with the principal case. Ignorance of fact and, therefore, absence of evil intent are no defense if the statute negatives that common law essential. *Com.* v. *Mixer,* 207 Mass. 141; *People* v. *Christian,* 144 Mich. 247; *Rex* v. *Wheat,* [1921] 2 K. B. 119, 20 MICH. L. REV. 108. The mere fact, however, that a statute does not contain the word "knowingly" or otherwise expressly require knowledge of fact, does not definitely indicate that knowledge is not an element in the crime. Such a requirement may be judicially implied. *Faulks* v. *People,* 39 Mich. 200; *Reg.* v. *Tolson,* 23 Q. B. Div. 168. Consideration of extrinsic circumstances is suggested in the latter case as a basis for interpretation of the statute. As to the constitutionality of statutes which negative knowledge as a necessary element in criminal liability, see, DUE PROCESS AND PUNISHMENT, 20 MICH. L. REV. 614.

DEEDS—MENTAL CAPACITY MAY EXIST THOUGH GRANTOR HAS NOT CAPACITY TO DO BUSINESS GENERALLY.—Grantor, a widow 93 years of age, made a deed of land to her two granddaughters, following a family consultation at which grantees were present. Plaintiff, grantor's guardian, sued in equity to set deed aside, alleging that grantor was mentally incompetent to execute a deed. *Held,* mental capacity may exist though grantor has not capacity to do business generally. *Sutherland State Bank* v. *Furgason* (Iowa, 1922), 186 N. W. 200.

The degree of mental capacity required to uphold a deed varies with the circumstances surrounding the conveyance, the requirement being that the grantor understand the transaction in hand in all its consequences. *Akers* v. *Mead,* 188 Mich. 277; *Chamberlain* v. *Frank,* 103 Neb. 442; *Swan* v. *Steven's Estate,* 206 Mich. 694. A distinction is to be noted between deeds in the nature of gifts or testamentary conveyances, and those resulting from an ordinary contract of sale. *Hamlett* v. *McMillin* (Mo., 1921), 223 S. W. 1069. The doctrine of the instant case is probably limited to the former, as capacity to do business generally is an ordinary test in cases of the latter type. *Porterfield* v. *Kuss,* (Mo., 1920), 226 S. W. 21; *Bordner* v. *Kelso,* 293 Ill. 175.

EVIDENCE—SHOULD JUDGE OR JURY DETERMINE WHETHER CONFESSION WAS VOLUNTARY?—Defendant was charged with murder, and on trial his confession was offered in evidence by the prosecution, and admitted by the court for determination of the jury as to whether it was voluntary. Defendant contended it was obtained by "third degree" methods, but the only evidential element raising any issue as to whether it was made freely and voluntarily was defendant's denial of any knowledge of it, or of having made or signed it. There was abundant evidence supporting the contention of the prosecution that it was made voluntarily by defendant. *Held,* assuming there was created a tangible doubt as to the voluntary character of the confession, it was proper for the court to admit it and leave the question to the jury. *People* v. *Utter* (Mich., 1921), 185 N. W. 830.